

**In re Robert Michael Voltl**  
**Petitioner-Appellee**  
Supreme Court No. M.R. 29943

Commission No. 2019PR00051

**Synopsis of Review Board Report and Recommendation**  
(October 2021)

Petitioner sought reinstatement. He was disbarred on consent in 2003, following his conviction in federal court on multiple counts of mail and wire fraud for his role in a property-flipping scheme. This was his third reinstatement petition. He withdrew his first petition after the Hearing Board recommended denying it, and the Court denied his second petition.

Following a hearing on his third reinstatement petition, the Hearing Board found that Petitioner had proved that he was rehabilitated and met the requirements for reinstatement, and recommended that he be reinstated to the practice of law, with conditions. The Administrator appealed, asking the Review Board to recommend that Petitioner not be reinstated to the practice of law.

The Review Board rejected the Hearing Board's conclusion that Petitioner had proved that he should be reinstated. It found that the egregious nature of Petitioner's misconduct weighed heavily against his reinstatement. It also found that, to date, he had completed less than one-fifth of the restitution obligation that was imposed in his criminal matter, and that the bulk of the restitution he had paid came through involuntary forfeiture of his assets rather than voluntary payments.

The Review Board thus concluded that Petitioner had not demonstrated that he should be reinstated, and recommended that his reinstatement petition be denied.

**BEFORE THE REVIEW BOARD  
OF THE  
ILLINOIS ATTORNEY REGISTRATION  
AND  
DISCIPLINARY COMMISSION**

In the Matter of:

**ROBERT MICHAEL VOLTL,**

Petitioner-Appellee,

No. 6203481.

Supreme Court No. M.R. 29943

Commission No. 2019PR00051

**REPORT AND RECOMMENDATION OF THE REVIEW BOARD**

**SUMMARY**

Petitioner seeks reinstatement. He was disbarred on consent in 2003, following his conviction in federal court on multiple counts of mail and wire fraud for his role in a property-flipping scheme. This is his third reinstatement petition. He withdrew his first petition, which he filed in 2007 shortly after his release from prison, after the Hearing Board recommended denying it. The Court denied his second petition in 2014.<sup>1</sup>

Following a hearing at which Petitioner was represented by counsel, the Hearing Board found that Petitioner proved that he is rehabilitated and meets the requirements for reinstatement, and recommended that he be reinstated to the practice of law, with conditions.

The Administrator appealed, asking this Board to recommend that Petitioner not be reinstated to the practice of law.

For the reasons that follow, we recommend that Respondent not be reinstated to the practice of law.

**FILED**

October 26, 2021

**ARDC CLERK**

## **BACKGROUND**

In July 2000, Petitioner was indicted on federal charges arising from a real-estate-flipping scheme that entailed 50 to 80 transactions between 1995 and 1998. In each transaction, property was purchased for cash, typically by a person using a false identity, and immediately resold at a fraudulently inflated price. The scheme generated a profit based on the difference between the first purchase price and the inflated price on the second purchase.

Petitioner was the only attorney among the 20 participants in the scheme. He represented both parties in the transactions and ensured that both sales closed. He typically arranged for the second purchase to close before the first purchase, so that the proceeds for the second transaction could be used to complete the first purchase. He deposited funds from the closings into his client trust account and, from that account, distributed proceeds to the other participants. He continued to participate in the scheme even after he knew the transactions were fraudulent. He realized about \$60,000 from the scheme, primarily from legal fees for representing the parties in the transactions.

The scheme caused significant harm. Many of the properties went into foreclosure and were abandoned. Mortgage lenders and the Department of Housing and Urban Development, which backed many of the loans, lost approximately \$4.4 million. The communities in which the properties were located were harmed through increased taxes and occupancy of abandoned buildings by drug dealers and squatters. In addition, in some of the fraudulent transactions, Petitioner acted as title agent for Attorneys Title Guarantee Fund (ATG). Even though ATG was unaware of the fraud, it paid \$1.1 million to settle strict liability claims brought against it by federally insured lenders, and spent significant resources investigating Petitioner's conduct and responding to subpoenas in the criminal proceeding. Petitioner also made statements that caused

ATG's president, Peter Birnbaum, to become a target of the investigation. The statements were false, and Birnbaum was never charged.

After a jury trial, Petitioner was convicted of eight counts of mail fraud and four counts of wire fraud. He was sentenced to 63 months' imprisonment, followed by three years of supervised release. He was ordered to pay restitution of \$3,862,843.53, jointly and severally with his co-defendants. He was also fined \$12,500.

### **HEARING BOARD'S FINDINGS AND RECOMMENDATION**

In determining whether to recommend that Petitioner be reinstated to practice, the Hearing Board looked to Supreme Court Rule 767(f), which instructs the hearing panel to "consider the following factors, and such other factors as the panel deems appropriate, in determining the petitioner's rehabilitation, present good character and current knowledge of the law:"

1. The nature of the misconduct for which Petitioner was disciplined;
2. The maturity and experience of Petitioner at the time discipline was imposed;
3. Whether Petitioner recognizes the nature and seriousness of the misconduct;
4. Whether Petitioner has made restitution;
5. Petitioner's conduct since discipline was imposed; and
6. Petitioner's candor and forthrightness in presenting evidence to support the petition.

After considering the evidence presented and applying it to the factors set forth in Rule 767(f), the Hearing Board found that Petitioner had proved that he is rehabilitated, of good character, and knowledgeable about the law. However, it also found that conditions on reinstatement were warranted, given the unpaid financial obligation remaining because of the criminal case and additional temporary conditions necessary to protect the public. Accordingly, it

recommended that Petitioner be reinstated to practice, with conditions related to mentoring, abstinence from alcohol and other unprescribed controlled substances, participation in therapy, and continued payment of restitution.

### ANALYSIS

An attorney who seeks reinstatement has the burden of proving, by clear and convincing evidence, that he should be reinstated. *In re Richman*, 191 Ill. 2d 238, 244, 730 N.E.2d 45 (2000).

There is no presumption in favor of reinstatement. *Id.* at 247-48. The petitioner must establish that he has been rehabilitated, that he is of present good character, and that he is currently knowledgeable about the law. *In re Livingston*, 133 Ill. 2d 140, 142, 549 N.E.2d 342 (1989).

The Hearing Board made factual findings as to each of the factors set forth in Rule 767(f) in determining Petitioner's rehabilitation, present good character, and current knowledge of the law. We review its legal conclusions *de novo*. *In re Scroggins*, 94 SH 638 (Review Bd., May 13, 1996), *approved and confirmed*, M.R. 10561 (Sept. 24, 1996). The Court alone decides whether or not to grant reinstatement. Thus, the Hearing Board's ultimate recommendation is advisory only – as is ours – and we also review it *de novo*. *In re Martinez-Fraticelli*, 03 RT 3002 (Review Bd., April 13, 2005), at 5, *recommendation adopted*, 221 Ill. 2d 255, 850 N.E.2d 155 (2006). Under the totality of the circumstances, we find that Petitioner has not met his burden of proving that he should be reinstated at this time.

Each factor enumerated in Rule 767(f) cannot be considered in isolation from the others. Rather, that rule presents a balancing test, the outcome of which indicates whether or not reinstatement is appropriate. There is no question that Petitioner has done much to turn his life

around; for that, we commend him. But the issue now before us is whether he has done enough to show that his privilege to practice law should be restored. We find that, so far, he has not.

Weighing heavily against his reinstatement is the reprehensible nature of Petitioner's misconduct in this matter. *See* S. Ct. R. 767(f)(1). Petitioner was the only lawyer among the perpetrators of a fraudulent property-flipping scheme that caused millions of dollars in losses as well as unquantifiable harm to the communities in which the property-flipping occurred. Furthermore, Petitioner not only used his law license to effectuate the fraud, but he was the lynchpin of it. He handled all of the real estate closings, thereby facilitating and legitimizing the transactions that formed the crux of the scheme. Petitioner, as an attorney, provided the fraudulent scheme with an appearance or cloak of legitimacy. Because Petitioner's conduct was so egregious, the other factors must tilt the scale extraordinarily in favor of rehabilitation. We cannot say that they do.

Equally significant, Petitioner has not completed restitution. *See* S. Ct. R. 767(f)(4). We accept the Hearing Board's factual finding that, while he has not paid restitution in full, Petitioner has paid at least \$727,775 toward restitution, which it found significant in absolute dollars, as well as relative to what Petitioner gained from the scheme (\$60,000) and what his 19 co-defendants have paid (collectively, about \$450,000). We also accept the Hearing Board's finding that Petitioner has been making voluntary payments on a consistent ongoing basis since being released from prison, including when his income was limited. However, we also note that, more recently, Petitioner has not engaged in income-producing employment, resulting in less potential income to be used to pay restitution.

In this latter regard, the total amount of restitution for which Petitioner is jointly and severally liable with his co-defendants is over \$3.86 million. Thus, he has paid less than a fifth of the restitution that is owed. Moreover, the bulk of the restitution he has made came through

involuntary forfeiture of his assets, rather than voluntary payments. (*See* Report of Proceedings at 446-47 (where Petitioner acknowledged that the majority of what he has paid in restitution came from involuntary forfeiture of his assets).)

Petitioner urges us to follow our reasoning in *In re Smith*, 2017PR00105, M.R. 28983 (Sept. 21, 2020), in which this Board recommended, and the Court allowed, the petitioner to be reinstated before making full restitution, with the condition that, within 30 days of reinstatement, the petitioner submit proof of a compromise or payment schedule with a victim of his misconduct that he had not yet repaid. The Hearing Board in this matter cited *Smith* in support of its recommendation that Petitioner be reinstated subject to conditions including continued payment of restitution.

We agree with the Administrator, however, that the circumstances in *Smith* are distinguishable from those in this matter. In *Smith*, the attorney was disbarred on consent for making misrepresentations to financial institutions on mortgage applications; he sought the mortgages to alleviate his personal financial problems. The attorney, who was criminally charged with making a false statement to a financial institution, admitted his criminal conduct and entered a deferred prosecution agreement that required him to complete community service and pay \$20,000 in restitution to the financial institution. He satisfied the restitution obligation imposed in his criminal proceeding, but, as of the time he petitioned for reinstatement, he had not repaid a second financial institution that was not part of the restitution obligation imposed in his criminal proceeding. As recommended by the Hearing and Review Boards, the Court reinstated the attorney with the condition that, within 30 days of the Court's order imposing discipline, he was required to submit to the Administrator proof of a compromise and/or a schedule for payment, in full or in part, of his debt to the second financial institution.

The misconduct of the attorney in *Smith*, while inexcusable, pales in comparison to that of Petitioner, who engaged in an extensive fraudulent scheme that lasted for years, involved upwards of 80 properties, resulted in the victims losing millions of dollars, and caused other serious harm. Most significantly, Petitioner used his role as an attorney, as well as his client trust account, to further the scheme. For his serious criminal conduct, he was sentenced to more than five years' imprisonment and ordered to pay restitution to his victims for the huge financial losses that he and his co-defendants caused. He has yet to complete that restitution obligation. Thus, because of the vastly different circumstances of the two matters, we do not believe that *Smith* compels the same outcome in this matter.<sup>2</sup>

Because of our recommendation here, we need not address the Hearing Board's other findings under Rule 767(f). Given the nature of Petitioner's misconduct, and considering that he has paid only a small fraction of the total amount of court-ordered restitution owed, we find that he has not proven that reinstatement is warranted under Rule 767(f).<sup>3</sup>

To be clear, we do not hold that Petitioner's misconduct is so egregious that it precludes reinstatement forever. Illinois does not impose mandatory lifetime disbarment by rule.<sup>4</sup> Moreover, Petitioner has taken certain positive steps toward rehabilitation. We simply hold that, under the unique circumstances of this matter, Petitioner has not demonstrated that he should be reinstated now.

### **CONCLUSION**

For the foregoing reasons, we recommend that Petitioner not be reinstated to the practice of law.

Respectfully submitted,

Leslie D. Davis  
George E. Marron, III  
Scott J. Szala



**CERTIFICATION**

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on October 26, 2021.

Michelle M. Thome

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Michelle M. Thome, Clerk of the  
Attorney Registration and Disciplinary  
Commission of the Supreme Court of Illinois

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<sup>1</sup> The Hearing Board also recommended denying the second petition for reinstatement. The Review Board reversed the Hearing Board’s findings regarding rehabilitation and recommended reinstating Petitioner with conditions. The Court granted the Administrator’s petition for leave to file exceptions and denied Petitioner’s petition.

<sup>2</sup> The Administrator argues broadly that anything less than the completion of full restitution precludes reinstatement. We need not resolve that issue here, given our conclusion that, under the specific circumstances of this matter, Petitioner has not shown that he should be reinstated at this time.

<sup>3</sup> We note that Petitioner has disregarded the recommendations of prior hearing panels that he abstain from alcohol entirely. It seems to us that a petitioner whose earlier reinstatement petitions were denied based, in part, on his continued alcohol use would voluntarily choose to follow all of the recommendations of the prior hearing panels in order to prove rehabilitation. However, that circumstance was not pivotal to our recommendation not to grant reinstatement.

<sup>4</sup> But see *In re Rothenberg*, 108 Ill. 2d 313, 326, 484 N.E.2d 289 (1985) (stating that “there are certain infractions that are so serious that the attorney committing them should never be readmitted to the practice of law ...”).

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In the Matter of:

**ROBERT MICHAEL VOLTL,**

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**PROOF OF SERVICE  
OF THE REPORT AND RECOMMENDATION  
OF THE REVIEW BOARD**

I, Andrea L. Watson, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by e-mail and regular mail, by depositing it with proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox in Chicago, Illinois on October 26, 2021, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellant by e-mail service.

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Petitioner-Appellee  
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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,  
Clerk

/s/ Andrea L. Watson  
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By: Andrea L. Watson  
Senior Deputy Clerk